SPECIAL RATING AREAS

Draft

CEDERBERG MUNICIPALITY

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1. INTRODUCTION

1.1 This policy for the establishing of special rating areas must be read together with the Local Government: Municipal Property Rates Act, 6 of 2004 **(MPRA")** and the Municipality's Special Rating Area By-laws, as in force from time to time.

1.2 All words and phrases defined in the MPRA and the By-Law have the same meaning in this Policy.

1.3 In the event of any conflict between the provisions of the By-Law and the provisions of this Policy, the By-Law prevails (to be promulgated still).

1.4 The Policy needs to be read together with the Municipality's Rates Policy.

2. AIM OF THE POLICY

This Policy aims to –

2.1 Set out Council's position on special rating areas and the factors that will influence Council's decision whether or not to determine a particular Special Rating Area.

2.2 Provide guidance to members of the local community and to decision-makers within the Municipality in relation to the establishment of special rating areas; and

2.3 Strike an appropriate balance between facilitating self-funded community initiatives that aim to improve and/or upgrade neighborhoods by –

2.3.1 making use of Council resources and structures; or

2.3.2 making use of a section 21 company structure;

2.3.3 ensure commitment to good, fair and transparent governance by the managing body, by implementing a transparent process when appointing service providers to improve and/or upgrade the special rating area in the public areas and ensuring that these improved and /or upgraded services and not provided on private properties.

3. EXCLUSION

This policy does not apply to privately-owned property developments or to gated developments.

4. POLICY STATEMENT

4.1 The special rating area model is based on international best practice. It is aimed at preventing the degeneration of towns and the consequential urban decay, and facilitating their upliftment, economic growth and sustainable development.

4.2 The purposes of a special rating area is to –

4.2.1 enhance and supplement the municipal services provided by Cederberg Municipality;

4.2.2 facilitate investment in the special rating area;

4.2.3 facilitate a cooperative approach between Cederberg Municipality and the private sector in the provision of municipal services;

4.2.4 halt the degeneration and facilitate the upliftment of distressed business and mixed-use areas; and

4.2.5 promote economic growth and sustainable development and in this way assist the Council in the fulfillment of its objects and developmental duties as set out in its Integrated Development Plan ("IDP").

4.3 Cederberg Municipality regards special rating areas as a potential tool for allowing it to fulfill its constitutional and statutory obligations to promote;

4.3.1 social and economic development; and

4.3.2 a safe and healthy environment in a way which balances the guiding principles underlying its Rates Policy.

4.4 Special rating areas allow property owners within a geographical area to improve and upgrade their area by means of a property rate in addition to the standard property rate.

5. FACTORS CONSIDERED WHEN DETERMINING A SPECIAL RATING AREA

The Council will consider determining a special rating area where the requirements of section 22 of the MPRA are complied with, including that –

5.1 the purpose of the special rating area is to allow an additional rate to be levied on property in the defined area to raise funds for improving or upgrading the area; [1]

5.2 the special rating area will not be used to reinforce existing inequities in the development of the Municipal area.

5.3 the determination of the special rating area is consistent with Cederberg municipalities' IDP;[3]

5.4 residential special rating areas mean an area in which more than 40 % (forty percent) of the rates base value consists of Residential Property as defined in the Rates policy.

5.5 any residential special rating area must comply fully with the provision of the By-Law, save that, with reference to the majority support the applicant must provide written proof to the Council that owners of rateable property within the boundary of the special rating area who own not fewer than 60 % (sixty percent) in number of such properties, approve the formation of the special rating area.

5.6 the majority of members of the local community who will be liable for paying any additional rate in the special rating area have consented to its establishment;[4]

5.7 the procedural requirements of section 22 of the MPRA [5]as well as the By-law and the Policy are complied with, including the community consultation requirement, as determined by the CFO;

5.8 the proposed improvement or upgrade has been clearly and fully defined;

5.9 the proposed improvement or upgrade can be clearly and logically linked to a geographical area, the boundaries of which can be clearly determined;

5.10 there is evidence that it will be financially viable to use a special rating area to raise funds for the proposed improvement or upgrade;

5.11 Cederberg Municipality is satisfied with the institutional arrangements proposed in respect of the special rating area; and

5.12 Ultimately, the decision whether or not to determine a special rating area rests with the Council in its sole discretion.

6. APPLICABILITY OF CEDERBERG MUNICIPALITY'S RATES POLICY AND OTHER POLICIES

6.1 Cederberg Municipality's Rates Policy applies with the necessary changes to this Policy. In particular, and without limiting the generality of the a foregoing, the exemptions, rebates and reductions set out in paragraphs 6.8 and 6.12 of Cederberg Municipality's Rates Policy apply with the necessary changes in relation to the levying of an additional rate for special rating area purposes.

6.2 Notwithstanding the provisions of paragraph 6.1 above, when Cederberg Municipality grants a partial rebate as set out in paragraph 6.8 of the Rates

Policy, the relevant property owner will be granted a full (100%) rebate in relation to the additional rate.

6.3 Other policies approved by the Council apply with the necessary changes, to the collection of additional rates in terms of the Policy, the By-Law and Section 22 of the MPRA, including, but not limited to, Cederberg Municipality's Credit Control and Debt Collection Policy.

7. PROCESS

7.1 This Policy sets out –

7.1.1 the institutional arrangements for special rating areas (paragraph 8)

7.1.2 the establishment requirements which must be followed (paragraph9);

7.1.3 the information which needs to be submitted to Cederberg Municipality in order to motivate a request for determination of a special rating area (paragraph 10);and

7.1.4 the annual requirements which must be followed (paragraph 11);

7.1.5 the amendments and/or extension of term for a special rating area (paragraph 12);

7.1.6 the dissolution requirements which must be followed (paragraph 13)

7.1.7 financial arrangements (refer paragraph 14).

8. INSTITUTIONAL ARRANGEMENTS

Section 22 of the MPRA is not prescriptive as to the structural arrangements which need to be put in place to administer a special rating area. The two broad structural arrangements that will be supported by the CFO are the following:

8.1 Administration by Cederberg Municipality

If the applicant chooses to use Cederberg municipality as its service provider the following must be adhered to:

a) The proposed improvements or upgrades must meet the aims and objects of this Policy;

b) The respective Council Directorate(s) must enter into an agreement to provide or manage the required services;

c) The necessary support for the proposed improvements or upgrades must be obtained;

d) The CFO must establish ring-fenced votes and record-keeping systems in respect of the income derived from the additional rate as set out in MPRA ; and[6]

e) The CFO will pay any expenses out of income generated by the additional rate.

8.1.1 The following provisions of the By-Law and the Policy are not applicable to special rating area administered by the Municipality: sections 10, 11 and 12(4) to 12(8) of the By-Law and paragraph 8.2 of the Policy.

8.2 **Administration by the section 21 company**

8.2.1 If the applicant proposes that the services/upgrades will be managed and implemented by them, Cederberg Municipality will require the ratepayers within the special rating area to establish and participate in an appropriate structure to carry out planning, contracting, financial control and administrative functions within the special rating area.

8.2.2 This option does not entail ratepayers *setting the* additional rate, which under law can only be done by Cederberg Municipality (paragraph 14.2).

8.2.3 The "administration by the section 21 company" option gives a higher degree of control and autonomy to ratepayers and, from the perspective of ratepayers who have promoted the special rating area, may be the preferred option.

8.2.4 Because this option places funds collected by government in the hands of the private sector, the requirements set out in this Policy must be met.

8.2.5 The functions of the structure would include:

a) Determining the funding required each year (refer paragraph 41.2);

b) Appointing contractors to effect the improvement/s or upgrade/s;

c) Receiving the additional rate collected by Cederberg Municipality and expending the funds in accordance with the approved Business Plan.

8.2.6 Structural requirements when administered by the section 21 company:

a) Before Cederberg Municipality will consider allowing ratepayers in a special rating area to carry out administrative and other functions in relation to the

area, the Steering Committee must establish a section 21 company (company not for gain) as per the Companies Act, 61 of 1973 (as amended or replaced) (**"the Companies Act"**) for that purpose. It is envisaged that the Companies Act will be replaced by the Companies Act, 61 of 2008 (**"the new Companies Act"**). When the new Companies Act is implemented, its provisions must be complied with, particularly those relating to non-profit companies (which effectively replace section 21 companies), subject to the transitional provisions contained therein;

b) The founding documentation in relation to the structure established by ratepayers (the Memorandum and Articles of Association, which will be replaced by a "Memorandum of Incorporation" under the new Companies Act), must be as per the prescribed format determined by the CFO;

c) The section 21 company must be managed under the Companies Act, and also comply with any other legislation as a result of the financial connections to Council; and

d) The section 21 company must give a written notice to all the property owners within the special rating area of the intention to hold an annual general meeting on the date stated in the notice by advertising in the local newspaper and in one English and one Afrikaans daily newspaper;

e) A Special General Meeting (**"SGM"**) must be called within 6 months of the establishment of the section 21 Company. The purpose of the SGM is to :

i) Accept new members;

ii) Appoint directors;

iii) Amend the Articles of Association if required; and

iv) Approve the following year's Budget and Implementation Plan (refer paragraph 14.2).

9. APPLICATION FOR THE ESTABLISHMENT OF A SPECIAL RATING AREA

9.1 The process for establishing special rating areas as set out in Chapter 1 of the by-Law must be followed, whether the special rating area is to be administered by Cederberg Municipality or by a Section 21 company.

9.2 The special rating area application must be submitted within reasonable time of the tabling of the annual and/or adjustment budget preceding the establishment of the special rating area.

9.3 Further to section 7.2 of the SRA By-law the applicant must hold another public meeting within 30 days after submitting the application to confirm that it was lodged and to discuss details with the community.

10. MOTIVATING A SPECIAL RATING AREA

The Business Plan comprises of the following:

10.1 **The motivation report must contain –**

10.1.1 Introduction:

10.1.1.1 an executive summary of the improvement or upgrade proposed for the special rating area as set out in the Implementation Plan;

10.1.1.2 An explanation of how the proposed improvement or upgrade is linked to the geographical area of the proposed special rating area;

10.1.1.3 An explanation of why the proposed special rating area will not reinforce existing inequities in the development of Cederberg Municipality;

10.1.1.4 An explanation of how the special rating area, if determined, will not contradict the Cederberg Municipality's IDP [7] as per the Service Departments Business Plans;

10.1.1.5 An explanation of the institutional arrangements proposed in relation to the special rating area (including whether the applicants to the special rating area are requesting that ratepayers carry out planning and administrative functions within the area, as contemplated in paragraph 8.2 of this Policy);

10.1.2 Vision;

10.1.3 Mission;

10.1.4 Goal;

10.1.5 A diagram clearly indication the boundaries of the proposed special rating area;

10.1.6 Management;

10.1.6.1 Whether the special rating area is to be administered by Cederberg municipality or by a section 21 company;

10.1.6.2 Proposed management structure:

- Composition of special rating area Board including allocation of portfolios and;
- Operational Arrangements

10.1.7 Services:

10.1.7.1 Service providers to be appointed as per paragraph 2.3.3. and 10.1.1.4.

10.1.8 Financial Impact:

- Provide details regarding the calculation of the cent-in-the-rand;
- Provide details of criteria to qualify for exemption of additional rate;

101.9 A list of all rateable properties within the proposed special rating area, contact details of owners and the value of each property as set out in the Council's general valuation. Differentiation between categories of properties, as provided for in section 8 of the MPRA, must be considered;

10.1.10 Proof of the consent of the majority of the members of the local community in the proposed special rating area who will be liable for paying the additional rate;

10.1.11 Proof of the notice of the public meeting or meetings contemplated in the By-law;

10.1.12 Minutes of the public meeting or meetings; and

10.1.13 Compilation date.

11. IMPLEMENTATION

The Implementation Plan is a schedule of goals to implement improvements or upgrades as per the motivation report and must at least address the following:

11.2.1 Milestones;

11.2.2. Tasks per milestone;

11.2.3 Start and finish date per task;

11.2.4 Assign responsibility per goal, milestone & task; and

11.2.5 Performance indicators per milestone.

11.3 **The budget for the proposed improvements or upgrades must at least address the following:**

11.3.1 an annual budget per line item commencing on 01 July of the first year and end on 30 June of the last year of the term; and

11.3.2 a budget split for the provision of improvements or upgrades between the different categories of properties.

12. ANNUAL REQUIREMENTS (refer 8.2.2)

12.1 Confirm property data base; and

12.2 Submit an annual budget an Implementation Plan as approval at the AGM by 31 January (refer paragraph 14.2).

13. AMENDMENT AND/OR EXTENSION OF TERM

In the event that a special rating area seeks to extend the term over which it will operate or amend the goals as per its Implementation Plan, then the procedures set out in Chapter 3 of the By-law must be followed and submitted by the end of October.

14. DISSOLUTION

The special rating area may be dissolved by resolution of the Council, subject to the provision of section 16 of the By-law.

15. FINANCIAL CONTROL

15.1 As stated in the By-law, the amount of any additional rate levied in a special rating area is determined by the Council. The additional rate is imposed by the Council, is debt owing to Cederberg Municipality and is payable and collected in the same manner as other property rates imposed by the Council.

15.2 The management structure must recommend the annual budget amount of the additional rate to the Cederberg Municipality by 31 January, with appropriate motivation including an Implementation Plan for the next financial year, and the Council will consider the recommendation during its budgeting process.

15.3 Before Cederberg Municipality will pay over any additional rate collected to the management structure, the management structure and Cederberg Municipality must have concluded a written finance agreement regulating, amongst other things;

15.3.1 the mechanisms and manner of payment;

15.3.2 how the additional rate is to be held by the management structure;

15.3.3 any parameters relating to expenditure; and

15.3.4 any obligations on the management structure to take out and maintain appropriate insurance.

16. COMMENCEMENT AND IMPLEMENTATION

16.1 Implementation of this Policy commences upon approval by Council resolution.

16.2 Where Cederberg Municipality is legally empowered to do so, requirements set out in this Policy may be imposed as conditions attached to the determination of a special rating area.

16.3 This Policy and its implementation must be reviewed annually.

16.4 Once the SRA has been approved by a Resolution of Council at its annual budget, the municipality will levy the special rate and funds will be paid to the SRA as they are collected.

17. COST

Cederberg Municipality shall not be liable for any costs incurred by ratepayers within the relevant proposed special rating area in respect of the implementation of the steps set out in this Policy and in the By-Law.

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[1] Section 22(1)(b)
[2] Section 22(4) [3]
Section 22(4)
[44] Section 22(2)(b) [5]
Section 22(2)(a)
[6] Section 22(3)©(i)
[7] The IDP is available on Cederberg Municipality's website: